

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 547

Introduced by Assembly Member Gatto

February 16, 2011

~~An act to amend Section 1812.101 of the Civil Code, relating to discount buying organizations. An act to amend Section 18070.2 of the Health and Safety Code, relating to manufactured housing.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 547, as amended, Gatto. ~~Discount buying organizations. Manufactured Home Recovery Fund: fee modification.~~

Existing law establishes the Manufactured Home Recovery Fund, which is continuously appropriated to make payments and distributions for actual and direct losses, as defined, arising out of specified transactions regarding the purchase or sale of a manufactured home, if certain conditions are met. Existing law prescribes a fee collected by the Department of Housing and Community Development for each reported sale of a manufactured home, to be deposited in the fund. Whenever the balance in the fund exceeds \$1,000,000 the department is authorized to reduce or increase the fee, respectively.

This bill would instead provide that the department may reduce the fee when the balance exceeds \$2,000,000.

~~Existing law regulates membership contracts for discount buying organizations. Discount buying organization is defined for these purposes to include any person or persons, corporation, unincorporated association, or other organization that, for a consideration, provides or purports to provide its clients or the clients or members of any other discount buying organization with the ability to purchase goods or~~

~~services at discount prices. Certain discount buying organizations are exempted from these provisions.~~

~~This bill would make a technical change by referring in that definition to an entity, among other technical, nonsubstantive changes.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 18070.2 of the Health and Safety Code
2 is amended to read:

3 18070.2. (a) Fees for the establishment and operation of the
4 Manufactured Home Recovery Fund shall be collected on or after
5 January 1, 1985. Claims against the fund arising from sales which
6 occur after January 1, 1985, may not be submitted to the
7 department before January 1, 1986. For purposes of this section,
8 the date of sale shall be either of the following:

9 (1) The date escrow closes for sales by dealers that are subject
10 to Section 18035 or 18035.2.

11 (2) For all other sales, including sales by dealers in which escrow
12 does not close, the date when the purchaser has paid the purchase
13 price or, in lieu thereof, has signed a security agreement, option
14 to purchase, or purchase contract and has taken physical possession
15 or delivery of the manufactured home.

16 (b) Notwithstanding any other provision of law, whenever the
17 balance in the Manufactured Home Recovery Fund exceeds ~~one~~
18 two million dollars ~~(\$1,000,000)~~ (\$2,000,000) on January 1 of any
19 year, the department may reduce the fee provided for in subdivision
20 (c) of Section 18070.1. The department may again increase the fee
21 up to a maximum of ten dollars (\$10) whenever the balance in the
22 fund falls below one million dollars (\$1,000,000).

23 SECTION 1. ~~Section 1812.101 of the Civil Code is amended~~
24 to read:

25 ~~1812.101. For the purpose of this title, the following definitions~~
26 shall apply:

27 ~~(a) "Discount buying organization" means any person or~~
28 ~~persons, corporation, unincorporated association, or other~~
29 ~~organization or entity that, for a consideration, provides or purports~~
30 ~~to provide its clients or the clients or members of any other discount~~
31 ~~buying organization with the ability to purchase goods or services~~

1 at discount prices, except that a discount buying organization does
2 not include any of the following:

3 (1) ~~Any discount buying organization in which the total~~
4 ~~consideration paid by each client or member in any manner~~
5 ~~whatsoever for the purchase of discount buying services from the~~
6 ~~organization that either:~~

7 (A) ~~Does not exceed a one-time fee of fifty dollars (\$50) or an~~
8 ~~annual fee of twenty-five dollars (\$25) to be paid on a yearly basis.~~

9 (B) ~~Does not exceed a one-time or annual fee of fifty dollars~~
10 ~~(\$50) and the organization provides a majority of the goods and~~
11 ~~services through purchases by members who walk in to a fixed~~
12 ~~location operated by the organization.~~

13 (2) ~~Any discount buying organization in which the total~~
14 ~~consideration paid by each client or member in any manner~~
15 ~~whatsoever for the purchase of discount buying services from the~~
16 ~~organization does not exceed a one-time or annual fee of one~~
17 ~~hundred dollars (\$100), and the organization is described by all of~~
18 ~~the following in subparagraphs (A) to (F), inclusive, but subject~~
19 ~~to subparagraph (G):~~

20 (A) ~~Offers buying services to clients or members through~~
21 ~~toll-free telephone access, computer access, or video shopping~~
22 ~~terminals.~~

23 (B) (i) ~~During the first year of membership of each member,~~
24 ~~upon the request of the member, provides a full refund of~~
25 ~~membership fees, exclusive of any fees, however designated, not~~
26 ~~exceeding ten dollars (\$10) in the aggregate, without conditions~~
27 ~~other than the surrender or destruction of materials that allow the~~
28 ~~member to access or use the service.~~

29 (ii) (I) ~~The organization shall establish an escrow account of~~
30 ~~fifty thousand dollars (\$50,000) for the purpose of providing~~
31 ~~refunds to members, pursuant to clause (i). If the fifty thousand~~
32 ~~dollars (\$50,000) deposited in escrow is depleted during the first~~
33 ~~year of the existence of the escrow account, the organization shall,~~
34 ~~within three business days of depletion, replenish the account in~~
35 ~~the amount of fifty thousand dollars (\$50,000). For each calendar~~
36 ~~year thereafter, the organization shall deposit in the account an~~
37 ~~amount equal to refunds made from the account in the prior~~
38 ~~calendar year, but not less than fifty thousand dollars (\$50,000).~~
39 ~~At any time the balance in the escrow account decreases to 50~~
40 ~~percent of the amount funded that year, the organization shall,~~

~~1 within three business days, replenish the account back to the
2 balance required at the beginning of that calendar year. The
3 organization shall provide proof of the establishment of the escrow
4 account to the Secretary of State and shall maintain records of all
5 member requests for refunds and refunds made pursuant to this
6 clause. The records shall be made available for review upon request
7 of the Attorney General, any district attorney, or the Department
8 of Justice.~~

~~9 (II) The escrow account shall be established and maintained at
10 a federally insured bank or federally insured financial institution
11 independent of the organization with escrow instructions making
12 the bank or financial institution or an officer or employee thereof
13 the escrow trustee.~~

~~14 (III) Refunds shall be made from the escrow account to any
15 member who provides proof of membership while a California
16 resident and requests, in writing, a membership refund, and has
17 not previously been refunded his or her membership fee. The
18 escrow trustee shall issue the refund within 10 days of the date the
19 written request is received by the escrow trustee. In addition,
20 requests for refunds may be made directly to, and paid directly by,
21 the organization.~~

~~22 (IV) Proof of creation of the escrow account, and membership
23 refund information, shall be provided to the members in the
24 following form:~~

~~25 “The _____ (organization) has established an escrow account for
26 the refund of membership fees at _____ (financial institution).
27 Refunds from the escrow account may, in addition to other
28 remedies and sources available to you, be obtained by mailing a
29 written request along with proof of membership to _____ (escrow
30 trustee). This refund request shall not affect or limit any other
31 remedy at law available to you.”~~

~~32 (C) Provides at least 15 toll-free service lines to California
33 consumers devoted exclusively to customer service questions and
34 complaints.~~

~~35 (D) Maintains a bond that meets the requirements of Sections
36 1812.103 and 1812.104, except that the principal sum of the bond
37 need only be twenty thousand dollars (\$20,000).~~

~~38 (E) (i) Possesses an unrevoked acknowledgment from the
39 Attorney General that the organization has provided to the Attorney
40 General, to the Attorney General’s reasonable satisfaction,~~

1 ~~marketing procedures and documents that clearly explain~~
2 ~~membership fee cancellation and refund terms, which include:~~

3 ~~(I) The amount of the initial membership fee and the process~~
4 ~~and timing for its collection.~~

5 ~~(II) If applicable, that a member shall be advised, before any~~
6 ~~charges are applied, that they need not provide billing information~~
7 ~~in order to be charged a membership fee, in circumstances in which~~
8 ~~the telemarketing firm has prior access to the member's billing~~
9 ~~information.~~

10 ~~(III) In the case of trial membership offers, the duration of the~~
11 ~~trial period, and notice that if the member does not cancel within~~
12 ~~the trial period, he or she will automatically be charged the~~
13 ~~membership fee.~~

14 ~~(IV) The specific process by which the member may cancel~~
15 ~~membership.~~

16 ~~(V) The written disclosure, printed in capital letters with a~~
17 ~~minimum 14-point boldface type, indicating who to contact, both~~
18 ~~directly through the company and through the escrow account, for~~
19 ~~a refund.~~

20 ~~(VI) The written disclosure made at the time of solicitation and~~
21 ~~at the time an enrollment package is sent to consumers.~~

22 ~~(ii) When an organization provides documentation that clearly~~
23 ~~explains membership fee cancellation and refund terms to the~~
24 ~~Attorney General's reasonable satisfaction, which includes the~~
25 ~~information required by subclauses (I) to (VI), inclusive, of clause~~
26 ~~(i) of subparagraph (E), the Attorney General shall issue a~~
27 ~~revocable acknowledgment to the organization for it to obtain this~~
28 ~~exception. The acknowledgment issued by the Attorney General~~
29 ~~is not evidence of the adequacy or accuracy of the organization's~~
30 ~~actual disclosures and representations provided to consumers. No~~
31 ~~organization in any marketing to consumers may make any~~
32 ~~reference to an acknowledgment issued by the Attorney General~~
33 ~~under this clause.~~

34 ~~(F) Provides the disclosures listed in subclauses (I) to (VI),~~
35 ~~inclusive, of clause (i) of subparagraph (E) to every prospective~~
36 ~~member.~~

37 ~~(G) The exemption provided in paragraph (2) is null and void~~
38 ~~if the organization fails to comply with the conditions set forth in~~
39 ~~this section, or if the Attorney General's office revokes the~~

1 exemption due to an organization not being in full compliance
2 with all of the provisions of this section.

3 (3) ~~Any discount buying organization in which persons receive~~
4 ~~discount buying services incidentally as part of a package of~~
5 ~~services provided or available to the individual on account of his~~
6 ~~or her membership in the organization, which is not organized for~~
7 ~~the profit of any person or organization, and which does not have~~
8 ~~as one of its primary purposes or businesses, the provision of~~
9 ~~discount buying services.~~

10 (4) ~~Any person, corporation, unincorporated association, or~~
11 ~~other organization or entity, which, for a consideration collected~~
12 ~~from another entity, provides or purports to provide the clients of~~
13 ~~the other entity with the ability to purchase goods or services at~~
14 ~~discount prices, if the clients of the other entity do not order from,~~
15 ~~or pay any money to, that person, corporation, unincorporated~~
16 ~~association, or other organization or entity. However, the entity~~
17 ~~from which the customer purchases the right to obtain goods or~~
18 ~~services at discount prices shall comply with the requirements of~~
19 ~~this title.~~

20 (b) ~~“Contract for discount buying services” means a contract~~
21 ~~between one party, hereafter referred to as the “buyer,” who is~~
22 ~~purchasing the services for personal or family use, and a discount~~
23 ~~buying organization, whereby the buyer, for a consideration,~~
24 ~~receives the right to obtain goods or services from the discount~~
25 ~~buying organization, or to utilize the discount buying organization~~
26 ~~services in obtaining goods and services, at discount prices.~~

27 (c) ~~“Discount prices” means prices that are represented to be~~
28 ~~lower on most or all offered goods or services than those generally~~
29 ~~charged for the items in the locality in which the representation is~~
30 ~~made.~~

31 ~~This definition is not intended to affect the degree of savings~~
32 ~~that must be offered on an item or selection of items in order to~~
33 ~~truthfully, and without misleading consumers, represent an item,~~
34 ~~selection of items, or entire store as being “discount” or~~
35 ~~“discounted.”~~